

HONORABLE J. RICHARD CREATURA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

v.

ISAAC JAMES WAGES, JONATHON
MICHAEL MCCULLOUGH, AND/OR
OTHER UNKNOWN OCCUPANTS,

Defendants.

JONATHON MICHAEL MCCULLOUGH,

Third-Party Plaintiff,

v.

RECONTRUST COMPANY, N.A.; BAC
HOME LOANS SERVICING, LP;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; THE
BANK OF NEW YORK; COUNTRYWIDE
HOME LOAN SERVICING LP;
COUNTRYWIDE HOME LOAN INC.;
CWMBS, INC.; CHL MORTGAGE PASS-
THROUGH TRUST 2007-20; FIRST
HORIZON HOME LOANS, a division of
FIRST TENNESSEE BANK, NA; PACIFIC
NORTHWEST TITLE CO.,

Third-Party Defendants.

No. 11-cv-05396 JRC

THIRD-PARTY DEFENDANTS
RECONTRUST COMPANY, N.A.,
BAC HOME LOANS SERVICING, LP,
THE BANK OF NEW YORK
MELLON AND COUNTRYWIDE
HOME LOANS, INC'S MOTION TO
DISMISS THIRD-PARTY
PLAINTIFF'S COMPLAINT

NOTE ON MOTION CALENDAR:

JUNE 24, 2011

ORAL ARGUMENT REQUESTED

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 On or about October 23, 2007, Isaac James Wages (“Wages”) obtained a mortgage loan
 3 to finance real property located in Pierce County. Wages subsequently defaulted on that debt
 4 and the Property was foreclosed and sold. Now, several months later, and only after the party
 5 purchasing the Property sought ejectment, Third-Party Plaintiff Jonathon Michael McCullough
 6 (“Plaintiff”) brings the present action against ReconTrust Company, N.A. (“ReconTrust”),
 7 BAC Home Loans Servicing, LP (for itself and as successor in interest to Countrywide Home
 8 Loans Servicing, LP) (“BACHLS”), Bank of New York Mellon (“BNYM”), Countrywide
 9 Home Loans, Inc. (“CHL”), and CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-20
 10 (collectively “Defendants”), among others.

11 In his Third-Party Complaint (“Complaint”), Plaintiff asserts entitlement to damages for
 12 breach of contract and wrongful foreclosure arising from Defendants’ enforcement of the Deed
 13 of Trust executed by Wages. Plaintiff claims that a Bankruptcy Court Discharge and Stay
 14 Order prevented enforcement of the Deed of Trust. Yet nowhere in his Complaint does
 15 Plaintiff identify *his interest* in the Property or Deed of Trust that would entitle him to
 16 recovery, much less allege sufficient facts that would support these claims if brought by the
 17 proper party.

18 Plaintiff’s claims are legally untenable and fail for following reasons:

- 19 • Plaintiff’s state law claims are waived because, under the *Brown* holding, a
 20 borrower can only challenge his underlying debt obligation on the mortgaged property before
 21 the property is foreclosed and here the Property at issue has already been sold at a foreclosure
 22 sale;
- 23 • Alternatively, Plaintiff’s state law claims cannot be sustained because they fail
 24 to state a plausible basis for relief; and
- 25 • Plaintiff’s Bankruptcy-related claims are belied by the Bankruptcy Court records
 26 indicating that Defendants’ interest in the Property survived Wages’ Discharge Order.

1 Because Plaintiff's claims are factually unsupported and legally untenable, the
2 Complaint should be dismissed in its entirety, and without leave to amend, pursuant to Fed. R.
3 Civ. P. 12(b)(6).

4 II. FACTS

5 Plaintiff offers no facts regarding the loan and property at issue. Defendants submit the
6 following based on publicly recorded documents.

7 On or about October 23, 2007, Wages obtained a \$191,300 mortgage loan (the "Loan")
8 to finance real property located at 1301 Garfield Street South, Tacoma, Washington 98444 (the
9 "Property"). Declaration of Jacob M. Downs ("Downs Decl."), Ex. A (Deed of Trust). The
10 Deed of Trust securing the Loan to the Property identifies Wages as the borrower, First
11 Horizon Home Loans as the lender, and Mortgage Electronic Registration Systems ("MERS")
12 as the beneficiary, "as nominee for Lender and Lender's successors and assigns." *Id.*
13 ReconTrust is the appointed successor trustee under the Deed of Trust. Downs Decl., Ex. B
14 (Appointment of Successor Trustee).

15 On or about June 17, 2010, MERS assigned the beneficial interest in the Deed of Trust,
16 "together with the note or notes therein described" to BACHLS. Compl., Ex. A. A Notice of
17 Trustee's Sale pertaining to the Loan and Property was recorded by ReconTrust on June 23,
18 2010. Downs Decl., Ex. C (Notice of Trustee's Sale). The Notice of Trustee's Sale reflects
19 total arrears of \$34,573.04. *Id.* at 2. On September 24, 2010, the Property was sold to Fannie
20 Mae via trustee's sale. Compl., Ex. B. The Trustee's Deed evidencing the transaction was
21 executed by ReconTrust and recorded on October 5, 2010.

22 On April 20, 2011, Fannie Mae filed an unlawful detainer action against Wages and
23 Plaintiff. On or about May 4, 2011, Plaintiff initiated the present action against Defendants.
24 Plaintiff alleges claims for breach of contract, and wrongful foreclosure. He also alleges
25 generally that MERS' assignment of its beneficial interest to BACHLS was not valid because
26 MERS was not a beneficiary, that the Note was "terminated" pursuant to Wage's bankruptcy
27

1 action, and that ReconTrust violated the Bankruptcy Court's automatic stay by initiating
2 foreclosure proceedings on the Property.

3 **III. ISSUE**

4 Whether the Court should dismiss Plaintiff's Complaint in its entirety and with
5 prejudice for failure to state a plausible claim against Defendants upon which relief can be
6 granted.

7 **IV. EVIDENCE RELIED UPON**

8 This Motion to Dismiss relies upon the allegations in the Complaint and the undisputed
9 recorded documents of which the Court may take judicial notice.¹

10 **V. ARGUMENT**

11 **A. Legal Standard.**

12 Federal Rule of Civil Procedure 8(a)(2) requires a plaintiff to provide "'a short and
13 plain statement of the claim showing that [he] . . . [is] entitled to relief,' in order to 'give the
14 defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl.*
15 *Corp. v. Twombly*, 550 U.S. 544, 546, 127 S. Ct. 1955, 1959 (2007) (quoting *Conley v. Gibson*,
16 355 U.S. 41, 47, 78 S. Ct. 99 (1957)). Claims that fail to meet this standard must be dismissed
17 under Federal Rule of Civil Procedure 12(b)(6).

18 While these Rules do not require heightened fact pleading, they do require that a
19 complaint contain sufficient factual allegations, which, accepted as true, state a claim for relief
20 "'that is plausible on its face.'" *Ashcroft v. Iqbal*, -- U.S. --, 129 S. Ct. 1937, 1949 (2009)
21 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). Where, however, the plaintiff fails
22 to "nudge[] [his] claims across the line from conceivable to plausible, [his] complaint must be

23 ¹ The Court may take judicial notice of publicly recorded documents and may consider the
24 documents without turning this motion into a motion for summary judgment. *See, e.g., Shaw v.*
25 *Hahn*, 56 F.3d 1128, 1129 n. 1 (9th Cir. 1995); *see United States v. Ritchie*, 342 F.3d 903, 908
26 (9th Cir. 2003) (court may consider documents to which the complaint "refers extensively" or
27 "form the basis of the plaintiffs' claim"); *Parrino v. FHP, Inc.*, 146 F.3d 669, 707 (9th Cir.
1998) ("A court may consider evidence on which the complaint 'necessarily relies' if: (1) the
complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no
party questions the authenticity of the copy attached to the 12(b)(6) motion.").

dismissed.” *Twombly*, 550 U.S. at 1974. This “plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* at 1949 (quoting *Twombly*, 550 U.S. at 556-57). Indeed, where there is an “obvious alternative explanation” for the conduct alleged, the complaint should be dismissed. *Iqbal*, 129 S. Ct. at 1951. Therefore, to survive a motion to dismiss under Rule 12(b)(6), the plaintiff must provide more than just “labels and conclusions”; rather, he must provide the grounds of his entitlement to relief. *Twombly*, 550 U.S. at 555 (“formulaic recitation of the elements of a cause of action will not do.”).

Moreover, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” *Iqbal*, 129 S. Ct. at 1949-50 (“threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice[;] only a complaint that states a plausible claim for relief survives a motion to dismiss.”). Indeed, while legal conclusions may establish the complaint’s basic framework, “they must be supported by factual allegations.” *Id.* at 1950.

In addition, where it is clear amendment would be futile, the Court may dismiss the complaint without leave to amend. *See Havas v. Thorton*, 609 F.2d 372 (9th Cir. 1979).

Here, as discussed below, Plaintiff has not “nudged” his claims “across the line from conceivable to plausible.” *Iqbal*, 129 S. Ct. at 1951 (citing *Twombly*, 550 U.S. at 570, 127 S. Ct. 1955). Accordingly, because no amendment will cure his claims’ deficiencies, the Court should grant Defendants’ Motion to Dismiss without leave to amend.

B. The Entire Complaint Is Inadequately Pled.

As an initial matter, Plaintiff’s Complaint falls short of the standard set forth in Federal Rule of Civil Procedure 8(a)(2) and *Twombly*. Nowhere does Plaintiff provide a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8. Neither does he plead any plausible claim for relief. Indeed, Plaintiff does not offer a single

fact to bolster his claims. Perhaps most notably, he does not even allege his own interest in the Property. He is seeking to obtain damages on a Note and Deed of Trust executed by another party, and yet he offers no basis for his interest in the Property and no explanation of why he stands to recover. And despite naming eleven different parties as Defendants to this action, he does not identify actions taken by any particular defendant, or the defendants' relationship to this action.

Instead of pleading facts, Plaintiff levies a series of unsupported and untenable legal conclusions against Defendants in an attempt to distract this Court from the fact that his Complaint is baseless. *See, e.g.*, Compl. §§ I (“any alleged rights to enforcement of the security instrument Deed of Trust were lost when the Note was transferred. . . and was never publicly recorded”); II (“AAA rated certificates replaced the subprime rated toxic loans permanently, making existence of the original Note impossible.”); III (“MERS could never have been a beneficiary due to never receiving any beneficial interest payments”). In short, Plaintiff's Complaint fails to “state a claim that is plausible on its face.” *Iqbal*, 29 S. Ct. at 1949. Defendants' Motion should be granted in its entirety for this reason alone.

C. Plaintiff's State Law Claims Cannot Be Sustained.

Plaintiff's Complaint brings state law causes of action for breach of contract and wrongful foreclosure. Neither of these claims can be sustained, however, because they are waived under the holding in *Brown*. Additionally, each is inadequately pled and legally untenable.

1. Plaintiff's State Law Claims Are Waived Under the *Brown* Holding.

Even assuming Plaintiff has a rightful interest in the Loan and Property and thus is entitled to bring suit against Defendants – which Defendants contend he does not, Plaintiff's state law claims are waived because the foreclosure sale has already occurred. Non-judicial foreclosures, such as the one at issue here, are governed by the Washington Deed of Trust Act (the “DOTA”). When a party has reason to challenge the foreclosure of his or her property, RCW 61.24.130 governs the procedure that must be followed to enjoin the sale. *See Brown v.*

1 *Household Realty Corp.*, 146 Wn. App. 157, 163, 189 P.3d 233 (2008), *review denied*, 165
 2 Wn.2d 1023 (2009). “This statutory procedure is ‘the only means by which a grantor may
 3 preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure.’”
 4 *Id.* (quoting *Cox v. Helenius*, 103 Wn.2d 383, 388, 693 P.2d 683 (1985)). If a borrower fails to
 5 enjoin the sale, the borrower waives any claims related to the underlying obligation and the sale
 6 itself. *Plein v. Lackey*, 149 Wn.2d 214, 227-28, 67 P.3d 1061 (2003) (finding waiver even
 7 though the plaintiff filed a lawsuit seeking to enjoin the sale prior to the sale because plaintiff
 8 failed to meet all of the DOTA’s requirements). “A party waives the right to post-sale
 9 remedies where the party (1) received notice of the right to enjoin the sale, (2) had actual or
 10 constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an
 11 action to obtain a court order enjoining the sale.” *Brown*, 146 Wn. App. at 163.²

12 Additionally, to preserve its claims against the lender, the borrower must comply with
 13 all the following requirements of the DOTA:

14 The court shall require as a condition of granting the restraining order or
 15 injunction that *the applicant pay to the clerk of the court the sums that would be*
 16 *due on the obligation secured by the deed of trust* if the deed of trust was not
 being foreclosed:

17 (a) In the case of default in making the periodic payment of principal, interest,
 18 and reserves, such sums shall be the periodic payment of principal, interest, and
 reserves paid to the clerk of the court every thirty days.

19 ...

20 (2) No court may grant a restraining order or injunction to restrain a trustee's
 21 sale *unless the person seeking the restraint gives five days notice to the trustee*
 of the time when, place where, and the judge before whom the application for
 the restraining order or injunction is to be made.

22 RCW 61.24.130(1) (2) (emphasis added).

23
 24 _____
 25 ² The Washington legislature responded to the Court of Appeals’ holding in *Brown* by
 26 promulgating RCW 61.24.127. RCW 61.24.127(1)(a)-(c) preserves post-sale claims for fraud,
 27 violations of the consumer protection act, and failure by the trustee to materially comply with
 the DOTA in cases of owner-occupied property. However, RCW 61.24.127 preserved the core
 holding of *Brown*: nearly all state law claims are waived where a borrower fails to restrain a
 trustee’s sale.

1 Here, a Notice of Sale was recorded in Pierce County, Washington, on June 23, 2010,
 2 providing constructive notice of the sale to anyone with an interest in the Property, including
 3 Plaintiff. Downs Decl., Ex. C. It is undisputed the Property was sold pursuant to a Trustee's
 4 Sale on September 24, 2010. Compl., Ex. B. Plaintiff did not file this action until May 4,
 5 2011, well after the sale. His state law based claims are thus waived. *Brown*, 146 Wn. App.
 6 at 163. Because Plaintiff's first claim for breach of contract, second claim for wrongful
 7 foreclosure, and third "claim" for invalid assignment necessarily arise from alleged
 8 pre-foreclosure conduct, they should be dismissed with prejudice. Additionally, Plaintiff failed
 9 to preserve any claims because he did not seek a restraining order or injunction.

10 **2. Plaintiff's Breach of Contract Claim Is Inadequately Pled.**

11 In his first claim for breach of contract, Plaintiff alleges that Defendants breached the
 12 Deed of Trust executed by Wages, by failing to "reconvey the Deed of Trust to the parties
 13 lawfully entitled thereto. . ." Compl. § I. Plaintiff argues further that Defendants lost the right
 14 to enforce the Deed of Trust when the Note was transferred to CWMBS, Inc. because said
 15 transfer was not recorded. *Id.* As discussed above, any such claim is waived under the *Brown*
 16 holding. The claim fails for the additional reasons below.

17 As a preliminary matter, there is no general requirement that assignments of Notes or
 18 Deeds of Trust be recorded in Washington State. Washington law defines "beneficiary" under
 19 a deed of trust as the holder of the instrument or document evidencing the obligations secured
 20 by the deed of trust. *See* RCW 61.24.005(2). *See also Fidelity & Deposit Co. of Maryland v.*
 21 *Ticor Title Ins. Co.*, 88 Wn. App. 64 (1997). It is well-settled in case law that "transfer of the
 22 note carries with it the security, without any formal assignment or delivery, or even mention of
 23 the latter." *Carpenter v. Longan*, 16 Wall. 271, 83 U.S. 271, 275, 21 L. Ed. 313 (1872); *see In*
 24 *re Leisure Time Sports, Inc.*, 194 B.R. 859, 861 (9th Cir. BAP 1996) (citing *Carpenter*).
 25 Indeed, the purpose of recording an assignment is to put parties who subsequently purchase an
 26 interest in the property on notice of which entity owns a debt secured by the property. RCW
 27

65.08.070. Thus, a lack of recording is not *per se* evidence of lack of ownership, and it cannot be the basis of Plaintiff's claim that Defendants lack authority to enforce the Deed of Trust.

Plaintiff's breach of contract claim also fails because it is wholly inadequately pled. The elements of a breach of contract claim are: "1) the existence of a valid contact between the parties, 2) breach by the defendant, and 3) damages." *Becker Family Builders Co-Plaintiffs Group v. Federal Deposit Ins. Corp.*, No. 09-5477, 2010 WL 3720284, at *3 (W.D. Wa. Sept. 17, 2010) (citing *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493 (2005)). Here, Plaintiff merely recites a provision from the Deed of Trust and asserts that Defendants breached by failing to convey the Deed of Trust to the "lawfully entitled" parties. Compl. § I. He does not allege that the sums owing under the security instrument were actually repaid such that the reconveyance provision would be applicable. He does not offer any facts pertaining to his alleged damages. In fact, he does not even identify the "parties lawfully entitled" to the Deed of Trust. "[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice" to plead a viable claim. *Iqbal*, 129 S. Ct. at 1949-50.

Because Plaintiff pleads no facts whatsoever in support of his first claim, it should be dismissed.

3. Plaintiff's Wrongful Foreclosure Claim Is Untenable.

Plaintiff's second claim for wrongful foreclosure is largely based on the same empty assertions grounding his breach of contract claim – namely that Defendants violated the terms of Deed of Trust, and that an assignment to CWMBS, Inc. invalidated the Note and Deed of Trust. Compl. § II. As discussed above, Plaintiff's conclusory allegations regarding breach are devoid of factual support and are thus insufficient to sustain any claim. *See Iqbal*, 129 S. Ct. at 1949-50.

Plaintiff further argues that the Note was "bifurcated" from the Deed of Trust, "destroyed," and replaced by "classes of certificates" rendering Defendants' claim unsecured. Compl. § II. However, the legal conclusion Plaintiff offers is inaccurate. There can be no bifurcation of the Note and Deed of Trust because the two instruments move together as a

1 matter of law: “transfer of the note carries with it the security, without any formal assignment
 2 or delivery, or even mention of the latter.” *Carpenter*, 83 U.S. at 275. Since there has been no
 3 destruction of Defendants’ security interest, Defendants’ enforcement of the Deed of Trust was
 4 not wrongful.

5 Ultimately, the recorded documents demonstrate that the foreclosure proceedings
 6 undertaken on the Property were appropriate. Plaintiff offers no allegations suggesting that
 7 Defendants’ actions violated the terms of the Deed of Trust or applicable statutory provisions
 8 relating to nonjudicial foreclosure.

9 For all these reasons, Plaintiff’s wrongful foreclosure claim fails to present a viable
 10 legal theory for recovery and should be dismissed with prejudice.

11 **4. Plaintiff Alleges No Facts Demonstrating that MERS Is Not a Proper**
 12 **Beneficiary.**

13 In his Complaint, Plaintiff contends that the Deed and any subsequent assignments are
 14 void because MERS could not act as beneficiary. Compl. § III. As discussed above, Plaintiff’s
 15 challenge of MERS’ authority is necessarily waived under the *Brown* decision. However, even
 16 if not waived, Plaintiff’s dispute of MERS’ authority still fails because the publicly recorded
 17 Deed of Trust establishes MERS’ status as the beneficiary and Plaintiff pleads no facts
 18 suggesting that a contrary finding is appropriate.

19 In October 2007, Wages executed the Deed of Trust in favor of MERS as beneficiary.
 20 Downs Decl., Ex. A. When Wages signed the Deed of Trust, he consented to MERS’ role in
 21 the transaction, including:

22 [MERS’] right: to exercise any or all of those interests [of the Lender or its
 23 successors and assigns], including, but not limited to, the right to foreclose and
 24 sell the Property; and to take any action required of the Lender including, but
 not limited to, releasing and cancelling this security instrument.

25 *Id.*, Ex. A at 3. Thus, by the plain language of the Deed of Trust, MERS possessed the authority
 26 to act as beneficiary. Plaintiff fails to plead a single fact negating the plain language of the
 27

1 Deed of Trust appointing MERS as beneficiary. Because MERS is the proper beneficiary and
 2 Plaintiff cannot suggest otherwise, his third claim should be dismissed.

3 **D. Plaintiff's Claims Regarding Discharge of the Note and Automatic Stay Are Belied**
 4 **by the Bankruptcy Court Record.**

5 In support of his fourth claim for discharge of original debtor, Plaintiff argues that
 6 Defendants were prevented from foreclosing on and selling the Property because the Note
 7 executed by Wages was discharged in 2009 pursuant to a Chapter 7 Bankruptcy petition.
 8 Compl. § IV. He further argues in his fifth claim that Defendants were prohibited from
 9 foreclosing by a Bankruptcy Stay Order. *Id.* § V. These claims are simply not true.

10 It is a well-established rule that a Chapter 7 Bankruptcy Discharge does not eliminate
 11 obligations secured by a lien on real property. *See* 11 U.S.C. § 524(a)(2) (a discharge only
 12 operates to enjoin creditors from collecting on debts “as a *personal liability* of the debtor.”).
 13 Thus, where, as here, the Note is secured on the Property by a valid and enforceable Deed of
 14 Trust (Downs Decl., Ex. A), the borrower’s obligation to make payments survives the
 15 bankruptcy absent a forfeiture of the property.

16 Here, not only did the Bankruptcy Court not terminate Wages’ duty to make payments
 17 under the Deed of Trust, it specifically granted relief from stay in order to facilitate
 18 enforcement of the instrument. On November 18, 2008, the Bankruptcy Court issued an Order
 19 granting then creditor of the Note, Countrywide Bank, FSB, relief from stay as to the Property
 20 and Deed of Trust: “[T]he automatic stay is terminated as to Countrywide Bank, FSB, its
 21 successors and assigns, so that it may pursue its state remedies to enforce its security interest in
 22 the Property and/or as to enforcement of the deed of trust[.]” Downs Decl., Ex. D (Order
 23 Granting Relief From Stay).

24 Moreover, the Discharge notice issued to Wages on December 31, 2008 acknowledges
 25 Defendants’ continuing rights to enforce the Deed of Trust: “The discharge prohibits any
 26 attempt to collect from the debtor a debt that has been discharged. . . However, *a creditor may*
 27 *have the right to enforce a valid lien, such as a mortgage or security interest, against the*

1 *debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the*
 2 *bankruptcy case.”* Downs Decl., Ex. E (Discharge of Debtor). Plaintiff does not allege in his
 3 Complaint that Defendants’ lien was “avoided or eliminated” by Wage’s bankruptcy petition.
 4 Nor can he so allege given that the Court specifically granted relief from stay. Downs Decl.,
 5 Ex. D.

6 Since the Deed of Trust securing Wages’ loan obligations to the Property was not
 7 avoided by his Chapter 7 Bankruptcy petition, his contentions regarding bankruptcy activities
 8 cannot sustain this claim.³

9 **E. Plaintiff’s Claims Should Be Dismissed With Prejudice**

10 In addition to being inadequately pled and offering no plausible basis for recovery,
 11 Plaintiff’s first, second and third claims are necessarily waived by the *Brown* holding. Thus,
 12 they must fail as a matter of law. Plaintiff’s fourth and fifth claims relating to Bankruptcy
 13 proceedings are similarly untenable because the Bankruptcy Court specifically granted relief
 14 from stay to enforce the at issue Deed of Trust and there was no “discharge” of Defendants’
 15 lien. For these reasons, it is clear no amendment can cure Plaintiff’s deficient claims.
 16 Defendants therefore request that alls claims be dismissed with prejudice.

17 **VI. CONCLUSION**

18 Plaintiff’s Complaint is short on facts and long on untenable legal conclusions.
 19 Ultimately, he does not state a single claim upon which relief can be granted and his pleadings
 20 give no reason to think amendment might cure the glaring deficiencies. Accordingly, his
 21 Complaint should be dismissed in its entirety, with prejudice, pursuant to Fed. R. Civ. P.
 22 12(b)(6).

23 _____
 24 ³ To the extent, Plaintiff seeks to assert that Defendants were prevented from foreclosing under
 25 a Stay Order issued relating to his own bankruptcy petition, any such claim is untenable.
 26 Section 362 of the Bankruptcy Code provides for an “automatic stay” of debt collection
 27 activities following the filing of a Bankruptcy Petition. 11 U.S.C. § 362. In order for real
 property to be part of the Bankruptcy Estate and thus subject to automatic stay provisions, the
 debtor must have an actual “equitable interest” in the Property. 11 U.S.C. § 541(d). Here,
 Plaintiff does not allege that he held *any* interest in the Property - much less an equitable one.

1 DATED: June 2, 2011

2 LANE POWELL PC

3
4 By s/Jacob M. Downs
5 John S. Devlin III, WSBA No. 23988
6 Jacob M. Downs, WSBA No. 37982
7 Attorneys for Third-Party Defendants ReconTrust
8 Company, N.A., BAC Home Loans Servicing, LP
9 (for itself and as successor-in-interest to
10 Countrywide Home Loans Servicing, LP), Bank of
11 New York Mellon (erroneously sued as The Bank
12 of New York), Countrywide Home Loans, Inc.
13 (erroneously sued as Countrywide Home Loan
14 Inc.), and CWMBS, Inc., CHL Mortgage Pass-
15 Through Trust 2007-20
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 2nd day of June, 2011, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to all CM/ECF participants and any non-CM/ECF participants will be served in accordance with the Federal Rules of Civil Procedure.

Ms. Lakisha M. Morris	<input checked="" type="checkbox"/>	by CM/ECF
Morris Law Office	<input type="checkbox"/>	by Electronic Mail
3820 S Pine Street	<input type="checkbox"/>	by Facsimile Transmission
Tacoma, WA 98409	<input type="checkbox"/>	by First Class Mail
Tel: 253.327.6616	<input type="checkbox"/>	by Hand Delivery
E-mail: lakishamorris@hotmail.com	<input type="checkbox"/>	by Overnight Delivery

Ms. Lisa McMahon-Myhran	<input checked="" type="checkbox"/>	by CM/ECF
Robinson Tait, P.S.	<input type="checkbox"/>	by Electronic Mail
710 Second Avenue, Suite 710	<input type="checkbox"/>	by Facsimile Transmission
Seattle, WA 98104-1724	<input type="checkbox"/>	by First Class Mail
Tel: 206.654.5529	<input type="checkbox"/>	by Hand Delivery
E-mail: lmcmahon@robinsontait.com	<input type="checkbox"/>	by Overnight Delivery

DATED this 2nd day of June, 2011.

s/Maria G. Raines
Maria G. Raines